

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

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YAAKOV KATZ

Case No.: 11-cv-9391-PAC

Plaintiff,

DECLARATION

v.

EXTRAORDINARY DVD VIDEO CORP.

Defendants.

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Shimshon Wexler, pursuant to 28 U.S.C. § 1746, declares the following:

1. I am the attorney for the plaintiff in this action. I make this declaration in support of plaintiff's motion for a default judgment against the Defendant.
2. This Court has subject matter jurisdiction over plaintiff's claims because plaintiff's claims were brought under the Electronic Funds Transfer Act or *15 USC § 1693 et seq.* and *15 USC § 1693m* states:

(g) Jurisdiction of courts; time for maintenance of action

Without regard to the amount in controversy, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

3. This court has personal jurisdiction over the defendant because the defendant was served via the secretary of state on December 29th, 2011. See **Exhibit A**.

4. The defendant in this case is not an infant or an incompetent, as the defendant is a corporation.

5. Attached is a copy of the certificate of default in this case stating that the defendant was properly served and failed to answer or appear. It is signed and stamped by the clerk of the Court.

6. Plaintiff alleges that defendant violated portions of *15 USC § 1693b* when it failed to advise plaintiff that he was going to be charged a fee “in a prominent and conspicuous location on or at the automated teller machine” at which plaintiff made his transaction.

FACTUAL AND PROCEDURAL HISTORY

7. Plaintiff brought this action against the defendant on December 21st, 2011. Defendant has failed to answer the claim asserted against it. Accordingly, a default judgment should be entered against the defendant in this action.

8. Plaintiff commenced this action on December 21, 2011, by filing a Summons and Complaint. A copy of the complaint is annexed as **Exhibit B**.

9. Defendant has failed to reply to answer plaintiff’s complaint. A Clerk's Certificate of default dated April 24th, 2012 is annexed as **Exhibit C**.

10. Plaintiff had originally brought this action against 3 defendants. However, the other 2 defendants have been dismissed because they have provided an affidavit which clearly shows that they are not the responsible parties in this action. Plaintiff and/or plaintiff's attorney has not received anything from the other 2 defendants in return for dismissing them from this action.

11. In the August 6th, 2012 Order, this Court directed plaintiff to move for a default judgment on his individual claims prior to seeking discovery on behalf of the class.

12. Plaintiff requests \$1,000 for his statutory damages pursuant to *15 USC § 1693m(a)(2)(B)*.

13. Plaintiff's attorney requests attorney's fees in the amount of \$1,750 for five hours of work at \$350 per hour for investigating the facts surrounding this case, drafting the complaint, attempting to contact the defendant to let them know they are in default and drafting the motion for a default judgment. Plaintiff also requests \$350 for the filing fee in this case and \$60 for service of process on the defendant. Attorney's fees are mandatory under this statute as *15 USC § 1693m(a)(3)* states that a consumer is entitled to "in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court."

14. By reason of the foregoing, I respectfully request that a default judgment be entered against the defendant on plaintiff's individual claims for \$3,160.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 17th, 2012
New York, NY

A handwritten signature in black ink, consisting of a stylized 'S' followed by 'Wexler', written over a horizontal line.

Shimshon Wexler